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April 1, 2005

## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 12th Street, S.W.  
Washington, D.C. 20554

### **Re: Notice of *Ex Parte* Meeting, WC Docket Nos. 04-36 and 03-251**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Federal Communications Commission's ("FCC") Rules, this letter serves to provide notice in the above-captioned proceedings of ex parte meetings with Commissioner Jonathan Adelstein and Commission staff. On March 31, 2005, the undersigned accompanied Mr. Jason P. Talley (Chief Executive Officer and Co-Founder) and Mr. Noah K. Wood (Chief Technical Officer, Director, and Co-Founder) of Nuvio Corporation ("Nuvio") to meet with Commissioner Adelstein, Scott Bergmann (Legal Advisor to Commissioner Adelstein), Jessica Rosenworcel (Legal Advisor to Commissioner Copps), and John Stanley (Legal Advisor to Commissioner Abernathy). During this meeting, Nuvio discussed the company's business and history, net neutrality, E-911 issues, DSL-tying, and reform of the Universal Service Fund ("USF") and intercarrier compensation regimes.

Nuvio is headquartered in Overland Park, Kansas. The company develops, licenses, and markets VoIP services to businesses, education, consumer and government customers through a growing network of private-label partners. However, the largest portion of Nuvio's current customers are business users. In addition to consumer NuvioVoice products, Nuvio also has NuvioCentrex, a complete IP based Centrex application for businesses that replaces existing telephony infrastructure.

Nuvio's comments concerning "net neutrality" were consistent with the filing the company made on September 13, 2004 in the IP-Enabled Services proceeding referenced above.<sup>1</sup> Internet access providers that also offer VoIP services have economic incentives to discriminate against unaffiliated VoIP providers in favor of affiliated providers. If left unregulated, this discrimination will endanger the vibrant competition that currently exists in the VoIP market and

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<sup>1</sup> See *IP-Enabled Services*, Nuvio Corporation Notice of Written Ex Parte Presentation, WC Docket No. 04-36 (filed Sept. 13, 2004).

ultimately harm consumers. The company notes that the practice of broadband discrimination is anti-competitive, and thwarts the Commission's previously enumerated principles of "net neutrality" or "Internet freedom." The Commission should exercise its authority under Title I to prohibit discrimination by broadband access providers, and preserve competition in the communications marketplace.

As a large portion of Nuvio's customers are business users, the company notes that both the regulations and customer expectations concerning E-911 service are different from those of other companies that primarily serve residential customers. However, to date, Nuvio has managed to provide an "E-911-like" service in approximately one-third of its rate centers. The company has established such service through commercial agreements with competitive local exchange carriers ("CLECs"). Nuvio's "E-911-like" solution, however, has several differences with "traditional" E-911 systems. First, the company must obtain location information from its customers in order to utilize the system. Second, customers that utilize "virtual" phone numbers cannot use Nuvio's E-911 system because of the limited capabilities of the existing E-911 infrastructure's selective routers. Third, if users decide to travel with their device, the address information provided by the customer upon initial setup will no longer be valid.

As Nuvio has no direct access to the traditional E-911 infrastructure, the company (and presumably other VoIP providers) need the assistance of the entire telecommunications community (including the Commission, state public utility commissions, carriers, public safety answering points, and other service providers) in order to develop a fully functional and universal E-911 solution for its customers. Without industry and government help, it will be impossible for Nuvio and other VoIP providers to provide a fully-functional "traditional" E-911 service to its customers.

Over 50% of Nuvio's customers utilize the company's service through third-party provided DSL services. The company believes that incumbent local exchange carrier ("ILEC") practices of tying DSL service to traditional voice service is anti-competitive, as well as a waste of numbering resources. Because Nuvio's business customers must obtain telephone numbers in order to purchase DSL services, those telephone numbers go largely unused. This leads to unnecessary waste of numbering resources nationwide. Nuvio urges the Commission to take action to prevent the anti-competitive and harmful practice of DSL-tying, and require broadband service providers to offer broadband Internet access services without bundling those services with the company's (or an affiliate's) phone service.

Nuvio's comments concerning USF reform for IP-enabled services were consistent with the company's filings in the IP-Enabled Services docket referenced above.<sup>2</sup> There is broad agreement in the industry that the USF funding mechanism must be reformed. While the Commission considers appropriate changes to the USF program, it should continue its current policy and refrain from extending legacy regulations such as USF obligation to Internet services,

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<sup>2</sup> See *IP-Enabled Services*, Comments of Nuvio Corporation, WC Docket No. 04-36 (filed May 28, 2004); see also *See IP-Enabled Services*, Reply Comments of Nuvio Corporation, WC Docket No. 04-36 (filed July 14, 2004).

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including all IP-enabled services. Nuvio is a retail purchaser of telephone circuits and is already charged USF fees by ILECs and CLECs for those services. Thus, instead of circumventing the USF system entirely, many VoIP service providers already contribute significantly to USF programs. Furthermore, the Commission should expand USF to subsidize 21<sup>st</sup> Century services and facilities. The Commission should put new emphasis on utilizing the USF program to promote broadband services and technologies, not just traditional telephone service and copper cable.

Nuvio's comments concerning intercarrier compensation reform were also consistent with the company's filings in the IP-Enabled Services docket referenced above.<sup>3</sup> The existing access charge and intercarrier compensation regimes are in need of fundamental reform. These regimes were originally designed to transfer costs and payments among monopoly owners of bottleneck communications facilities, and have little relevance in the context of IP-enabled service. Further, in the context of Nuvio's VoIP offerings, LECs are already fully compensated for the origination and termination of communications and enhanced services traffic. Calls originated by and terminated to Nuvio customers are carried between the customer and Nuvio's call servers via the Internet over a broadband connection that is paid for by the Nuvio customer. LECs are further compensated through the purchase of end-user numbers for use by Nuvio customers, as well as for traffic originating and terminating on the PSTN pursuant to the traditional agreements between carriers.

Pursuant the Commission's Rules, this letter is being submitted electronically for filing in the above-referenced proceeding.

Sincerely,

/s/  
Ronald W. Del Sesto, Jr.

Counsel for Nuvio Corporation

cc: Jason P. Talley, Nuvio Corporation  
Noah K. Wood, Nuvio Corporation

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<sup>3</sup> See *id.*